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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,076	03/02/2004	James A. Harvey	JH03-271	2964
7590 John C. Andrade P.O. Box 598 Dover, DE 19903	01/08/2007		EXAMINER PLUMMER, ELIZABETH A	
			ART UNIT 3635	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/08/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/791,076	HARVEY, JAMES A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Elizabeth A. Plummer	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 02 March 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected..
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All. b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 03/02/2004.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

This is a first Office action on the merits for application serial number 10/791,076 filed 03/02/2004. Claims 1-10 are pending.

### ***Claim Objections***

1. Claims 1-10 are objected to because of the following informalities:
  - a. Claim 1, lines 5-6, and claim 3, line 2, recite the limitation "said cross arms". There is insufficient antecedent basis for this limitation in the claims.
  - b. Claims 2-6 recite the limitation "cross arm utility pole guarding device" in line 1. There is insufficient antecedent basis for this limitation in the claim. Examiner suggests amending the claim to read, "cross-armed utility pole guarding device."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 8, it is unclear what space the phrase, "wherein the space of said housings" is intended to refer to. Is it the length of the housing, the width of the housing or the space between the housings? For purposes of examination, it is assumed that the space refers to the separating space between the housings.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 6, 7 and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Raptor Guard 2004.

a. Regarding claims 1 and 7, Raptor Guard 2004 discloses a cross-armed utility pole guard device comprising a housing (Figs.) of non-conductive, non-sticky material (bottom left textbox) having a sloped top to prevent debris from accumulating at the top of said housing (Figs.) and a means for connecting said housing to said utility pole parallel to said cross arms (left Fig.).

b. Regarding claim 2, the housing is a continuous smooth surface (Figs.).

c. Regarding claims 6 and 10, the device further comprises a side of the housing extending down from the top of the housing wherein the sides have spaced holes suitable for screwing the sides of the housing into cross arms (left Fig.; top right textbox.)

6. Claims 1, 3, 7 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ogawa et al. (Japanese Abstract 09028267A).

a. Regarding claims 1 and 7, Ogawa et al. discloses a cross-armed utility pole guarding device comprising a housing of non-conductive, non-sticky

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material having a sloped top to prevent debris from accumulating at the top of the housing and a means for connecting the housing to the utility pole parallel to cross arms (Fig. 3).

b. Regarding claim 3 and 8, more than one housing is attached to the cross arms wherein the space separating the housing is less than 4 inches (Fig. 3).

7. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by

Ogawa et al. (Japanese Abstract 09028268A).

a. Regarding claim 1, Ogawa et al. discloses a cross-armed utility pole guarding device comprising a housing of non-conductive, non-sticky material having a sloped top to prevent debris from accumulating at the top of the housing and a means for connecting the housing to the utility pole parallel to the cross arms (Fig. 3).

b. Regarding claim 5, the housing is rounded at the top (Fig. 3).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raptor Guard 2004. Regarding claim 4 and 9, Raptor Guard 2004 discloses a housing which is U.V. protected. Raptor Guard 2004 does not disclose that the housing is made of a clear plastic material. However, it would have been a matter of obvious design

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choice to form the housing out of a clear plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Plummer whose telephone number is (571) 272-2246. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on (571) 272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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